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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE TERMINATION)
OF THE PARENT-CHILD RELATIONSHIP)
OF J.B., minor child, and)
EDGAR BRADBURY, natural father,)

Appellant-Defendant,)

vs.)

STATE OF INDIANA,)

Appellee-Plaintiff.)

No. 79A04-0604-JV-189

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Loretta H. Rush, Judge
Cause No. 79D03-0501-JT-1

August 28, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Edgar Bradbury appeals the termination of his parental rights with respect to J.B., his son. Bradbury presents the following restated issue for review: Was the termination of parental rights supported by clear and convincing evidence?¹

We affirm.

Bradbury and J.B.'s mother, Wanda, were married in 1998. J.B. was born the previous year, on December 1, 1997. Wanda had two daughters from a previous marriage. The Tippecanoe Family Department of Child Services (TCDACS) first became involved with the family in March 2003, when neglect was substantiated due to the family home being below the minimum standards of living. On April 17, 2003, TCDACS received a report of neglect, alleging that J.B., who was just over 6 years old at the time, weighed 153 pounds. Neglect was substantiated against Bradbury and Wanda and an informal adjustment was initiated because of J.B.'s rapid weight gain and morbid obesity. Both parents agreed to participate in services to monitor compliance with medical recommendations and help remedy J.B.'s weight problem. Services included Family Preservation Services through Families United and a Riley Hospital weight loss program called Hip Hop. In the summer of 2003, Bradbury was incarcerated and J.B. stayed with his aunt. J.B. lost twenty pounds while living with his aunt. Bradbury was released from prison on September 10, and immediately asked that J.B. be returned to his custody. On

¹ Bradbury presents a second challenge, i.e., whether the trial court was "premature in terminating his parental rights in that he had recently been released from prison." *Appellant's Brief* at 1. We will discuss that issue later in this opinion.

September 17, 2003, TCDACS received another neglect report, this one alleging Bradbury's home was in "horrible condition," including food and clothes piled "everywhere," only one bed in the entire home, and the ceiling was falling down. *Appellant's Appendix* at 20. Neglect was again substantiated "after the family home was found in deplorable condition." *Id.* at 51.

Bradbury and J.B.'s mother separated in January 2004 and J.B. resided solely with his father after that. Three months later, Bradbury was incarcerated for welfare fraud. While he lived with Bradbury in late 2003 and early 2004, J.B. had regained seventeen of the twenty pounds he had previously lost while living with his aunt. A subsequent neglect charge was substantiated against Bradbury on grounds of "environment life/health endangering" and "lack of supervision." *Id.* at 23. A Child In Need of Services (CHINS) detention hearing was held on April 13, 2004. The court found that J.B. should be removed from the home "because continuation in the home would not be in the best interest of the child and would be contrary to the welfare of the child." *Id.* at 258. The court also found that Bradbury would be incarcerated for at least one year and that J.B.'s mother could not be found. Accordingly, the court ordered that J.B. be placed in foster care. On May 7, 2004, the TCDACS filed a CHINS petition, alleging "[J.B.'s] physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of the child(ren)'s parent, guardian or custodian to supply the child(ren) with necessary food, clothing, shelter, medical care, education or

supervision.” *Id.* at 36. At the May 12 CHINS hearing, Bradbury and J.B.’s mother admitted the allegations set forth in the petition.

A Predispositional Report was completed on June 28, 2004. In that report, the TCDCS recommended that J.B. remain in foster care and participate in supervised visitation through the Debra Corn Agency. With respect to Bradbury, the report recommended as follows: (1) participate in family Preservation Services through Families United; (2) attend parental classes and individual counseling sessions; (3) complete a SAFTIP² assessment and follow the assessment’s recommendations; (4) undergo a psychiatric evaluation with Dr. Vanderwater-Piercy; and (5) submit to periodic random drug screens through the counseling center. A Predisposition Order was entered on that day – June 28 – finding that J.B. was a CHINS and ordering Bradbury to complete the services recommended by the TCDCS in the Predispositional Report.

On November 14, 2004, the court entered an Order on Early Review in which it directed that J.B. should remain in foster care, and ordered Bradbury to complete the following services:

[P]articipate in family preservation services through Families United, submit to random drug screens at the request of the Court, the Division, the CASA or service providers; participate in the visitation plan as determined by the treatment team; fully comply with all conditions as set forth in the

² This acronym apparently refers to a sexual deviancy treatment program, appears in various places throughout the appellate materials as “SAFE-TIP”, “SAFETIP”, and “SAFTIP”. We will employ the latter spelling in this opinion.

SAFTIP recommendations; obtain/maintain housing; and obtain/maintain a means to financially support his family.

Id. at 241. A case conference was held on December 21, 2004. With respect to Bradbury, the TCDCS noted that he was still incarcerated and that “the Division [was] unable to inform the Court that the original reasons for removal have been remedied.” *Id.* 603. At that time, the TCDCS recommended that Bradbury’s parental rights should be terminated. On January 12, 2005, the court ordered Bradbury to “notify the Division immediately upon his release from incarceration; participate in the SAFTIP Program; and voluntarily avail himself of any services available in the community.” *Id.* at 235.

Bradbury was released from jail on March 17, 2005. He went to the TCDCS office three times, but the woman he was supposed to speak with was not there. Thereafter, Bradbury failed to contact his caseworker, did not leave an address at which he could be reached, moved to Kokomo, and made no arrangements to see J.B. A termination of parental rights hearing was conducted on April 8, 2005. At the conclusion of the hearing, the trial court entered an order terminating Bradbury’s parental rights. Further facts will be provided where necessary.

The nature of Bradbury’s arguments on appeal is not entirely clear. He recites the criteria set out in Ind. Code Ann. § 31-35-2-4 (West, PREMISE through 2006 Public Laws approved and effective through March 15, 2006) for terminating parental rights, but makes no discernible argument that the evidence supporting any particular element was insufficient. Thus, we interpret his contention in this regard as a general claim that the

requisite elements were not proven. Bradbury's primary complaint, however, seems to be that he was not given enough time following his release from prison to make the improvements that the TCDCS recommended needed to be made. We will begin our analysis with this claim.

We note that Bradbury did not present this point to the trial court. That is, he did not complain at the termination hearing that he had not been given enough time after his release from incarceration to obtain the ordered services and make the necessary improvements. Generally, an issue cannot be raised for the first time on appeal. *McBride v. Monroe County Office of Family & Children*, 798 N.E.2d 185 (Ind. Ct. App. 2003). Any issue so raised is waived. *Id.* Even were it not waived, Bradbury's argument on this issue is not persuasive. Primarily, his argument seems to be that he was doing a better job of raising his child than was the father in *Rowlett v. Vanderbaugh County Office of Family & Children*, 841 N.E.2d 615 (Ind. Ct. App. 2006), *trans. denied*. The *Rowlett* father had also been recently released from incarceration, and the termination of his rights was reversed. There were, however, significant differences between the *Rowland* facts and those of the instant case.

In *Rowland*, while incarcerated, the father "took steps and made a good-faith effort to better himself as a person and as a parent." *Id.* at 621. For example, by about the time of the termination hearing, "he had participated in nearly 1,100 hours of individual and group services, including services in encounters, anger management and impulse control, parenting skills, domestic violence, self-esteem, self-help, and substance abuse." *Id.*

Also, he had earned twelve hours of college credit while incarcerated and was enrolled in an additional eighteen hours. Finally, the father in *Rowland* had maintained a close relationship with his children while incarcerated by sending letters and speaking with them by telephone. The children responded by sending him pictures they had drawn. Clearly, reversal of termination of parental rights in *Rowland* was not premised upon the fact that the parent had been incarcerated up to the time of the termination hearing. Rather, reversal was deemed appropriate because during his incarceration, the father had received services aimed at correcting those problems that had rendered him an unfit parent, and had maintained a good relationship with his children. The same cannot be said in the instant case.

We can find no indication in the record that Bradbury availed himself of any services or rehabilitative programs offered at the facility where he was incarcerated during the time relevant to this appeal. As of the time the TCDCS filed its appellee's brief (May 9, 2006), Bradbury had not seen J.B. since April 8, 2004, although he had written to the child several times. If any principle emerges from *Rowland*, it is that an incarcerated parent who diligently seeks to address deficiencies in his or her parenting skills while still incarcerated and who maintains contact with his or her children to the greatest extent possible should be given a chance to demonstrate that meaningful change has occurred that may negate one or more of the criteria that must be established in order to justify termination of parental rights. Bradbury has failed to establish that his is such a situation. Therefore, *Rowland* does not support his appeal.

As indicated above, Bradbury does not challenge the evidence pertaining to any particular element necessary for the termination of parental rights. Therefore, we will review the evidence with respect to those elements.

Parental rights are of a constitutional dimension, but the law provides for the termination thereof when the parents are unable or unwilling to meet their parental responsibilities. *In re R.S.*, 774 N.E.2d 927 (Ind. Ct. App. 2002). Parental rights are terminated not to punish the parents, but to protect their children. *Id.* When evaluating the circumstances surrounding the termination, the trial court must subordinate the parents' interests to those of the child. *Id.* Termination is proper where the child's emotional and physical development is threatened. *Id.* We have often observed that the trial court need not wait until the child is irreversibly harmed before terminating the parent-child relationship. *See id.* "A parent's habitual pattern of conduct is relevant to determine whether there is a substantial probability of future neglect or deprivation of the child." *Id.* at 930. We will not set aside a judgment terminating a parent-child relationship unless it is clearly erroneous. *In re R.S.*, 774 N.E.2d 927. When reviewing the sufficiency of the evidence supporting a judgment of involuntary termination, we neither reweigh the evidence nor judge witness credibility. *Id.* We consider only the evidence supporting the judgment, together with the reasonable inferences to be drawn therefrom. *Id.*

I.C. § 31-35-2-4(b)(2) sets out the elements that must be alleged and proven by clear and convincing evidence in order to terminate a parent-child relationship. Those elements are:

- A) one (1) of the following exists:
 - (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;

* * * * *

- (B) there is a reasonable probability that:
 - (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
 - (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
- (C) termination is in the best interests of the child; and
- (D) there is a satisfactory plan for the care and treatment of the child.

Id. Because it is undisputed that J.B. had been removed from Bradbury for at least six months under a dispositional decree and there is a satisfactory plan in the event termination is justified, we will concentrate our analysis upon subsections (B) and (C).

The trial court found there was clear and convincing evidence that there is a reasonable probability the conditions resulting in J.B.'s removal from Bradbury's home will not be remedied. J.B. was removed for substantiated neglect in the areas of "environment life/health endangering and lack of supervision." *Appellant's Appendix* at 23. J.B. was diagnosed as morbidly obese by the time he was five years old. Following that diagnosis, J.B. was enrolled in the Hip Hop program and temporarily lived with his aunt. During that time, J.B. lost twenty pounds. Bradbury and J.B.'s mother "were both

receiving considerable services to help with that. They were going to a program in Indianapolis ... to educate them about nutrition, exercise, all of that kind of thing.” *Id.* at 78. But, according to Christy Flynn, a mental health counselor who worked with J.B., Bradbury “didn’t participate.” *Id.* Within a few months of moving back into Bradbury’s home, J.B. regained seventeen of the twenty pounds he had lost. We note that after subsequently living with foster parents during Bradbury’s incarceration for welfare fraud, J.B. lost thirty-one pounds, reducing his waist size from forty to thirty-three inches. Medical tests revealed that there was no medical cause of J.B.’s obesity; he merely ate too much and exercised too little. Clearly, Bradbury’s lack of supervision and attention to the issue was a significant contributing factor in J.B.’s weight problem.

Another area of major concern with respect to Bradbury’s parenting was his history of sexual abuse. In 1987, he was convicted of molesting his second wife’s daughter – his step-daughter. He was sentenced to five years probation and ordered to complete the SAFTIP program. Bradbury’s probation was revoked for failure to complete that program. Later, a son born to Bradbury’s marriage to his second wife was adjudicated a CHINS “because of sexual abuse and neglect” at the hands of Bradbury. *Id.* at 309. Finally, Wanda’s oldest daughter alleged that she was abused by Bradbury while Wanda was in jail. Although it is not clear that the alleged abuse was sexual in nature, it underscores the need for Bradbury to complete the SAFTIP program. Bradbury never completed that program in relation to his molestation conviction, and has not completed it since, despite being ordered to do so. In fact, Bradbury completed the

SAFTIP assessment while he was in jail. The report recommended that Bradbury submit to an “immediate” polygraph, and that he “complete a sexual offender treatment program that uses polygraphs to monitor compliance, and visits [with J.B.] should remain fully supervised until Mr. Bradbury has successfully progressed in treatment and reduced his risk to re-offend.” *Appellant’s Appendix* at 153. The CASA put it more bluntly elsewhere in her report: “Edgar Bradbury is a convicted child molester, who never completed his court ordered services from that conviction, prior to involvement in this case.” *Id.* at 151.

We reiterate that a parent’s habitual pattern of conduct may be considered in determining whether there is a substantial probability of future neglect or mistreatment of the child. *See In re R.S.*, 774 N.E.2d 927. J.B. appears to be susceptible to significant and unhealthy weight gain unless he is supervised utilizing a holistic approach, including counseling, exercise, and close monitoring of his eating habits. Bradbury has utterly failed to supervise J.B. in this respect, and appears not to be interested in doing so in the future. Such an approach poses a danger to J.B.’s health. Also, there is ample evidence that Bradbury has sexually abused children and is not inclined to avail himself of programs that could prove therapeutic with respect to that behavior. Again, this situation poses a danger to J.B.

In summary, Bradbury has a long-standing pattern of abusive behavior and of failing to adequately supervise J.B.’s nutritional needs. Moreover, he seems disinclined to change in those respects. This constitutes clear and convincing evidence that there is a

reasonable probability that the conditions that resulted in J.B.'s removal from Bradbury's home will not be remedied.

We next review the record for clear and convincing evidence that the continuation of the parent-child relationship poses a threat to J.B.'s well-being. As indicated above, the two most significant dangers facing J.B. with respect to his father include Bradbury's inability and/or disinclination to supervise J.B. in the areas of diet and exercise. As J.B. has demonstrated a tendency to eat to the point of growing morbidly obese, this clearly poses a significant threat to J.B. The danger of sexual abuse at Bradbury's hands is no less significant. Bradbury has, on two prior occasions, molested children living in his home and under his care. As of the time the TCDCS filed its brief, Bradbury was under investigation for yet another allegation of sexual abuse, this one by Wanda's daughter, J.B.'s half-sister. So far as we can tell, Bradbury has consistently refused to meaningfully participate in services that address this problem.

Flynn observed that J.B. is a child who acts out internally rather than externally. In counseling, he exhibited signs of being afraid of something, but Flynn has to date not been able to determine the nature of those fears. J.B. spoke with her about his "secrets" and that he would be hurt if he told anyone about those secrets. *Appellant's Appendix* at 69. According to J.B., it is not safe for anyone to know about the secret but J.B. and "Freddy", who J.B. describes as his "boss" but does not otherwise identify. *Id.* We note here that Wanda and Bradbury are no longer together, and she has voluntarily relinquished her parental rights. Thus, if J.B. were to return home, it would be to

Bradbury's home under Bradbury's sole supervision. Finally, we note that J.B.'s TCDCS caseworker, Angela Stone, and his counselor, Flynn, are both of the opinion that a continuation of the parent-child relationship between J.B. and Bradbury would be harmful to J.B. Clearly, in light of the foregoing history of behaviors and tendencies on Bradbury's part, a continuation of the parent-child relationship poses a threat to J.B.'s well-being.

Finally, we review the record for clear and convincing evidence that termination of the parent-child relationship is in J.B.'s best interests. While living with Bradbury, J.B.'s weight ballooned to the point of morbid obesity. Removed from Bradbury's care and living with his aunt, J.B. lost twenty pounds. Later, after he was placed in foster care, J.B. lost thirty-one pounds and his waistline reduced from forty to thirty-three inches. As of the time of the filing of the appellee's brief, J.B. was continuing to lose weight. From the standpoint of J.B.'s emotional health, he continues to work with Flynn, with a main issue being that J.B. has "a lot of fears." *Id.* at 577. Although J.B. is working through some of those fears, Flynn believes he will not disclose some things that have happened to him until he knows he will not be returned to his father's custody. In addition to the above, J.B. is interacting well with his foster family. According to Flynn, "he seems very comfortable there." *Id.* at 79. He is making satisfactory progress in school. In fact, "[he] is asking for permanency. He's asking if he can be involved in activities at the foster home, like 4-H, longer term kinds of activities, asking where he's going to be next school year with say the foster parents." *Id.* TCDCS caseworker Stone,

counselor Flynn, and CASA Sue Moylan unanimously agreed that termination of Bradbury's parental rights would be in J.B.'s best interests. We conclude that the foregoing constitutes clear and convincing evidence that termination of the parent-child relationship with Bradbury is in J.B.'s best interests.

Judgment affirmed.

MATHIAS, J., and BARNES, J., concur.